

AMENDED IN SENATE APRIL 17, 2006

AMENDED IN SENATE APRIL 5, 2006

SENATE BILL

No. 1116

Introduced by Senator Scott
(Coauthors: Senators Kuehl and Romero)
(Coauthors: Assembly Members Koretz and Pavley)

January 4, 2006

An act to amend Sections 2352, 2540, 2543, 2590, and 2591 of, and to add Sections 2352.5 and 2591.5 to, the Probate Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

SB 1116, as amended, Scott. Conservatorships.

(1) Existing law generally authorizes a guardian or conservator to fix the residence of a conservatee or ward within the state without permission of the court, by selecting the least restrictive appropriate setting, as specified, that is in the best interests of the conservatee. Existing law requires the guardian or conservator to promptly give notice of all changes in the residence of a conservatee or ward.

This bill would revise and recast this provision to permit a guardian or conservator to select the least restrictive appropriate residence of a conservatee or ward. This bill would require a presumption that the least restrictive appropriate ~~setting~~ residence for the conservatee is the personal residence of that conservatee. This bill would require a conservator to evaluate the level of care and measures necessary to keep the conservatee in his or her personal residence or explain the limitations or restrictions regarding a return to the conservatee to his or her personal residence. This bill would require the guardian or conservator to file notice of the change of address for a ward or

conservatee in 30 days. *This bill would permit the court to waive notice of the change of address in order to prevent harm to the conservatee or ward.* This bill would require the Judicial Council to develop a form consistent with this provision by January 1, 2008.

(2) Existing law provides that sales of real or personal property of the estate of a conservatee are subject to authorization, confirmation, or direction of the court, except as otherwise provided and except for the sale of a conservatee's personal residence. In seeking authorization to sell a conservatee's present or former personal residence, the conservator is required to notify the court that the personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee, among other requirements.

This bill would revise the provisions for the proposed sale of the personal residence of a conservatee and require a conservator to publish and post a notice of sale, reappraisal for sale, minimum offer price, and other information related to the sale of the personal residence, as specified. This bill would delete restrictions regarding the sale of the personal residence of the conservatee related to contracts with and compensation of agents, brokers, and auctioneers, and restrictions regarding the sale of personal property.

(3) Under existing law, the court, in its discretion, may make an order granting a conservator one or more powers, as specified, for the advantage, benefit, and best interest of the estate of the conservatee. These powers include the sale of real property of the estate.

This bill would additionally require that the sale of the personal residence of a conservatee, including the terms of sale ~~and~~, price, *and commissions to be paid from the estate*, to be in the best interest of the conservatee, that the sale of that personal residence shall comply with requirements for appraisal and minimum offer price, and other conditions, as specified.

(4) This bill would make related, nonsubstantive and clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2352 of the Probate Code is amended to
2 read:

2352. (a) The guardian may ~~fix~~ *establish* the residence of the ward at any place within this state without the permission of the court. ~~In fixing the residence, the~~ The guardian shall select the least restrictive appropriate ~~setting~~ *residence* that is available and necessary to meet the needs of the ward, and that is in the best interests of the ward.

(b) The conservator may ~~fix~~ *establish* the residence of the conservatee at any place within this state without the permission of the court. ~~In fixing the residence, the~~ The conservator shall select the least restrictive appropriate ~~setting~~ *residence*, as described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee.

(c) If permission of the court is first obtained, a guardian or conservator may ~~fix~~ *establish* the residence of a ward or conservatee at a place not within this state.

(d) An order under subdivision (c) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or a longer or shorter period ~~as is~~ specified in the order.

(e) (1) The guardian or conservator shall file a notice of change of residence with the court within 30 days of the date of the change. The conservator shall include in the notice of change of residence a declaration stating that the conservatee's change of residence is consistent with the standard described in subdivision (b). *The Judicial Council shall, on or before January 1, 2008, develop a form notice and declaration to be used for this purpose.*

(2) The guardian or conservator shall mail a copy of the notice to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section 1822 and shall file proof of service of the notice with the court. ~~The Judicial Council shall, no later than January 1, 2008, develop a form notice and declaration to be used for this purpose. The court may, for good cause, waive the mailing requirement pursuant to this paragraph in order to prevent harm to the conservatee or ward.~~

(f) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to ~~fix~~ *establish* his or her own residence.

SEC. 2. Section 2352.5 is added to the Probate Code, to read:

2352.5. (a) It shall be presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate ~~setting~~ *residence* for the conservatee, ~~in the absence of a showing to the contrary by the petitioner for conservatorship or conservator.~~ *conservatee.*

(b) Upon appointment, the conservator shall determine the appropriate level of care for the conservatee.

(1) ~~The~~ *That* determination ~~of the conservator~~ shall include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence.

(2) If the conservatee is living at a location other than his or her personal residence at the commencement of the proceeding, ~~the~~ *that* determination ~~of the conservator~~ shall either include a plan to return the conservatee to his or her personal residence or ~~explain an explanation of the limitations or restrictions regarding~~ *on* a return of the conservatee to his or her personal residence in the foreseeable future.

(c) The conservator shall evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care.

SEC. 3. Section 2540 of the Probate Code is amended to read:

2540. (a) Except as otherwise provided in Sections 2544 and 2545, and except for the sale of a conservatee's present or former personal residence as set forth in subdivision (b), sales of real or personal property of the estate under this article are subject to authorization, confirmation, or direction of the court, as provided in this article.

(b) In seeking authorization to sell a conservatee's present or former personal residence, the conservator shall notify the court that the present or former personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee. ~~In addition, the~~ *The* conservator shall inform the court whether the conservatee supports or is opposed to the proposed sale and shall describe the circumstances that

1 necessitate the proposed sale, including whether the conservatee
2 has the ability to live in the personal residence and why other
3 alternatives, including but not limited to in-home ~~supportive care~~
4 services, are not available. The court, in its discretion, may
5 require the court investigator to discuss the proposed sale with
6 the conservatee. This subdivision shall not apply when the
7 conservator is granted the power to sell real property of the estate
8 pursuant to Article 11 (commencing with Section 2590).

9 SEC. 4. Section 2543 of the Probate Code is amended to read:

10 2543. (a) If estate property is required or permitted to be
11 sold, the guardian or conservator may:

12 (1) Use discretion as to which property to sell first.

13 (2) Sell the entire interest of the estate in the property or any
14 lesser interest therein.

15 (3) Sell the property either at public auction or private sale.

16 (b) Subject to Section 1469, unless otherwise specifically
17 provided in this article, all proceedings concerning sales by
18 guardians or conservators, publishing and posting notice of sale,
19 reappraisal for sale, minimum offer price for the property,
20 reselling the property, report of sale and petition for confirmation
21 of sale, and notice and hearing of that petition, making orders
22 authorizing sales, rejecting or confirming sales and reports of
23 sales, ordering and making conveyances of property sold, and
24 allowance of commissions, shall conform, as nearly as may be, to
25 the provisions of this code concerning sales by a personal
26 representative as described in Articles 6 (commencing with
27 ~~Section 103800~~ 10300), 7 (commencing with Section 10350), 8
28 (commencing with Section 10360), and 9 (commencing with
29 Section 10380) of Chapter 18 of Part 5 of Division 7. The
30 provisions concerning sales by a personal representative as
31 described in the Independent Administration of Estates Act, Part
32 6 (commencing with Section 10400) of Division 7 shall not apply
33 to this subdivision.

34 (c) The clerk of the court shall cause notice to be posted
35 pursuant to subdivision (b) only in the following cases:

36 (1) If posting of notice of hearing is required on a petition for
37 the confirmation of a sale of real or personal property of the
38 estate.

39 (2) If posting of notice of a sale governed by Section 10250
40 (sales of personal property) is required or authorized.

1 (3) If posting of notice is ordered by the court.

2 SEC. 5. Section 2590 of the Probate Code is amended to read:

3 2590. The court may, in its discretion, make an order granting
4 the guardian or conservator any one or more or all of the powers
5 specified in Section 2591 if the court determines that, under the
6 circumstances of the particular guardianship or conservatorship,
7 it would be to the advantage, benefit, and best interest of the
8 estate to do so. Subject only to the requirements, conditions, or
9 limitations as are specifically and expressly provided, either
10 directly or by reference, in the order granting the power or
11 powers, and if consistent with Section 2591, the guardian or
12 conservator may exercise the granted power or powers without
13 notice, hearing, or court authorization, instructions, approval, or
14 confirmation in the same manner as the ward or conservatee
15 could do if possessed of legal capacity.

16 SEC. 6. Section 2591 of the Probate Code is amended to read:

17 2591. The powers referred to in Section 2590 are:

18 (a) The power to contract for the guardianship or
19 conservatorship and to perform outstanding contracts and thereby
20 bind the estate.

21 (b) The power to operate at the risk of the estate a business,
22 farm, or enterprise constituting an asset of the estate.

23 (c) The power to grant and take options.

24 (d) (1) The power to sell at public or private sale real or
25 personal property of the estate, other than the personal residence
26 of a conservatee.

27 (2) The power to sell at public or private sale the personal
28 residence of the conservatee as described in Section 2591.5.

29 (e) The power to create by grant or otherwise easements and
30 servitudes.

31 (f) The power to borrow money and give security for the
32 repayment thereof.

33 (g) The power to purchase real or personal property.

34 (h) The power to alter, improve, and repair or raze, replace,
35 and rebuild property of the estate.

36 (i) The power to let or lease property of the estate for any
37 purpose (including exploration for and removal of gas, oil, and
38 other minerals and natural resources) and for any period,
39 including a term commencing at a future time.

40 (j) The power to lend money on adequate security.

1 (k) The power to exchange property of the estate.

2 (l) The power to sell property of the estate on credit if any
3 unpaid portion of the selling price is adequately secured.

4 (m) The power to commence and maintain an action for
5 partition.

6 (n) The power to exercise stock rights and stock options.

7 (o) The power to participate in and become subject to and to
8 consent to the provisions of a voting trust and of a
9 reorganization, consolidation, merger, dissolution, liquidation, or
10 other modification or adjustment affecting estate property.

11 (p) The power to pay, collect, compromise, arbitrate, or
12 otherwise adjust claims, debts, or demands upon the guardianship
13 or conservatorship.

14 (q) The power to employ attorneys, accountants, investment
15 counsel, agents, depositaries, and employees and to pay the
16 expense.

17 SEC. 7. Section 2591.5 is added to the Probate Code, to read:

18 2591.5. (a) Notwithstanding any other provisions of this
19 article, a conservator seeking an order under Section 2590
20 authorizing a sale of the conservatee's personal residence shall
21 ~~do all of the following:~~

22 ~~(1) Demonstrate~~ *demonstrate* to the court that the terms of
23 sale, including the price ~~that for which~~ the property is to be sold
24 ~~and the commissions to be paid from the estate,~~ are in all respects
25 in the best interests of the conservatee.

26 ~~(2) Comply~~

27 *(b) A conservator authorized to sell the conservatee's personal*
28 *residence pursuant to Section 2590 shall comply* with the
29 provisions of Section 10309 concerning appraisal or new
30 appraisal of the property for sale and sale at a minimum offer
31 price.

32 ~~(3) Obtain court approval of the commissions to be paid from~~
33 ~~the estate at the time the conservator seeks an order under~~
34 ~~Section 2590.~~

35 ~~(b)~~

36 *(c)* Within 15 days of the close of escrow, the conservator
37 shall serve a copy of the final escrow settlement statement on all
38 persons entitled to notice of the petition for appointment for a
39 conservator and all persons who have filed and served a request

1 for special notice and shall file a copy of the final escrow
2 statement along with a proof of service with the court.
3 (e)
4 (d) The court may, for good cause ~~order a conservator to be~~
5 ~~exempt from compliance with~~, *waive* any of the requirements of
6 this section.

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